

**2nd Session
105th Congress**

WATER RESOURCES DEVELOPMENT ACT OF 1998
BILL LANGUAGE

To provide for the conservation and development of water and related resources, to authorize the Secretary to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE: TABLE OF CONTENTS.

(a) SHORT TITLE. – This Act may be cited as the “Water Resources Development Act of 1998”.

(b) TABLE OF CONTENTS. -

SECTION 1. SHORT TITLE: TABLE OF CONTENTS.

SECTION 2. DEFINITIONS.

SECTION 3. PROJECT AUTHORIZATIONS.

SECTION 4. FLOOD HAZARD MITIGATION AND RIVERINE
ECOSYSTEM RESTORATION PROGRAM.

SECTION 5. SHORE PROTECTION.

DRAFT BILL LANGUAGE

1 SECTION 6. SMALL FLOOD CONTROL PROJECTS.

2 SECTION 7. USE OF NON-FEDERAL FUNDS FOR COMPILING AND
3 DISSEMINATING INFORMATION ON FLOODS AND FLOOD
4 DAMAGES.

5 SECTION 8. EVERGLADES AND SOUTH FLORIDA ECOSYSTEM
6 RESTORATION.

7 SECTION 9. AQUATIC ECOSYSTEM RESTORATION.

8 SECTION 10. BENEFICIAL USES OF DREDGED MATERIAL.

9 SECTION 11. COOPERATIVE AGREEMENTS FOR NATURAL
10 RESOURCES, ENVIRONMENTAL PROTECTION,
11 CONSERVATION, AND RECREATION MEASURES.

12 SECTION 12. CONTRIBUTIONS BY STATES AND POLITICAL
13 SUBDIVISIONS.

14 SECTION 13. RECREATION USER FEES.

15 SECTION 14. SHORELINE MANAGEMENT PROGRAM FEES.

16 SECTION 15. WATER RESOURCES DEVELOPMENT STUDIES FOR
17 THE PACIFIC REGION.

18 SECTION 16. WATER RESOURCES FOUNDATION.

19 SECTION 17. REGULATORY PROGRAM FUNDING.

20 SECTION 18. FLOOD MITIGATION NEAR PIERRE, SOUTH
21 DAKOTA.

22 SECTION 19. LOWER MISSOURI RIVER AQUATIC RESTORATION
23 PROJECTS.

24 SECTION 20. PAYMENT OPTION, MOOREFIELD, WEST VIRGINIA.

DRAFT BILL LANGUAGE

SECTION 2. DEFINITIONS.

For purposes of this Act the term “Secretary” means the Secretary of the Army.

SECTION 3. PROJECT AUTHORIZATIONS.

(a) **PROJECTS WITH REPORTS.** The following projects for water resources development and conservation and other purposes are authorized to be carried out by the Secretary substantially in accordance with the plans, and subject to the conditions, described in the respective reports designated in this section:

(1) AMERICAN RIVER WATERSHED, CALIFORNIA. --

(A) **GENERAL.** -- The project for flood damage reduction described as the Folsom Stepped Release Plan in the U.S. Army Corps of Engineers Supplemental Information Report for the American River Watershed Project, California, dated March 1996 is authorized for construction at a total cost of \$464,600,000, with an estimated Federal cost of \$302,000,000 and an estimated non-Federal cost of \$162,600,000.

(B) IMPLEMENTATION. --

(i) Implementation of the measures by the Secretary pursuant to paragraph (A) of this subsection shall be undertaken subsequent to the levee stabilization and strengthening and flood warning features authorized in section 101(a)(1) of Public Law 104-303 [110 Stat. 3662 - 3663].

(ii) The Secretary may undertake measures at the Folsom Dam and Reservoir authorized pursuant to paragraph (A) only after reviewing the design of such measures to determine if modifications are necessary to account for changed hydrologic conditions and any other changed conditions in the project area, including operational and construction impacts that have occurred since completion of the Report referred to in paragraph (A) of this subsection. The Secretary shall conduct the review and develop such modifications to the Folsom Dam with the full participation of the Secretary of the Interior.

DRAFT BILL LANGUAGE

(iii) Implementation of the remaining downstream elements authorized pursuant to paragraph (A) may be undertaken only after the Secretary, in consultation with affected Federal, State, Regional, and local entities, has reviewed the elements to determine if modifications are necessary to address changes in the hydrologic conditions, any other changed conditions in the project area that have occurred since completion of the Report referred to in paragraph (A) of this subsection and any design modifications for the Folsom Dam and Reservoir made by the Secretary in implementing the measures referred to in paragraph (B)(ii), and has issued a report on the review.

(2) AMITE RIVER AND TRIBUTARIES, LOUISIANA, EAST BATON ROUGE PARISH WATERSHED.- The project for flood damage reduction and recreation, Amite River and Tributaries, Louisiana, East Baton Rouge Parish Watershed: Report of the Chief of Engineers, dated December 23, 1996, at a total cost of \$110,045,000, with an estimated Federal cost of \$71,343,000 and an estimated non-Federal cost of \$38,702,000.

(3) GUANAJIBO RIVER, PUERTO RICO.- The project for flood damage reduction, Guanajibo River, Puerto Rico: Report of the Chief of Engineers, dated February 27, 1996, at a total cost of \$27,441,000, with an estimated Federal cost of \$17,837,000 and an estimated non-Federal cost of \$9,604,000.

(4) RIO NIGUA AT SALINAS, PUERTO RICO.- The project for flood damage reduction, Rio Nigua at Salinas, Puerto Rico: Report of the Chief of Engineers, dated April 15, 1997, at a total cost \$13,565,000, with an estimated Federal cost of \$7,079,000 and an estimated non-Federal cost of \$6,486,000.

DRAFT BILL LANGUAGE

1 (b) PROJECTS SUBJECT TO A REPORT. The following project for water resources
2 development and conservation and other purposes is authorized to be carried out by the Secretary
3 substantially in accordance with the plans and subject to the conditions recommended in a report
4 of the Chief of Engineers, as approved by the Secretary:

5 (1) **GRAND FORKS, NORTH DAKOTA, AND EAST GRAND**
6 **FORKS, MINNESOTA.-** The project for flood damage reduction and recreation, Grand
7 Forks, North Dakota and East Grand Forks, Minnesota, Report of the Chief of Engineers
8 consisting of setback levees and floodwalls, at a total cost of \$281,754,000, with an
9 estimated Federal cost of \$140,877,000 and an estimated non-Federal cost of
10 \$140,877,000.

**SECTION 4. FLOOD HAZARD MITIGATION AND RIVERINE ECOSYSTEM
RESTORATION PROGRAM.**

(a) IN GENERAL.- The Secretary is authorized to undertake a program to reduce flood hazards and to restore the natural functions and values of riverine ecosystems throughout the United States. In carrying out the program, the Secretary may conduct studies to identify appropriate flood damage reduction, conservation, and restoration measures and may design and implement watershed management and restoration projects. The studies and projects carried out under this authority shall be conducted, to the maximum extent practicable, with the full participation of the appropriate Federal agencies, including the Department of Agriculture, the Federal Emergency Management Agency, the Department of the Interior, the Environmental Protection Agency, and the Department of Commerce. Such studies and projects shall, to the maximum extent practicable, emphasize non-structural approaches to preventing or reducing flood damages.

(b) COST-SHARING REQUIREMENTS.- The cost of studies conducted under this authority shall be shared in accordance with section 105 of the Water Resources Development Act of 1986 [100 Stat. 4088-4089] as amended by section 203 of the Water Resources Development Act of 1996 [110 Stat. 3677-3678]. The non-Federal interests shall pay 35 percent of the cost of any environmental restoration or non-structural flood control project carried out under this authority. The non-Federal interests shall provide all lands, easements, rights-of-way, dredged material disposal areas, and relocations necessary for such projects, and the value of such lands, easements, rights-of-way, dredged material disposal areas, and relocations shall be credited toward the payment required under this subsection. For any structural flood control measures carried out under this authority, the cost sharing shall be in accordance with section 103(a) of the Water Resources Development Act of 1986 as amended by section 202 of the Water Resources Development Act of 1996 (33 U.S.C. 2213(a)). The non-Federal interests shall be responsible for all costs associated with operating, maintaining, replacing, repairing, and

DRAFT BILL LANGUAGE

1 rehabilitating all projects carried out under this authority.

2 (c) PROJECT JUSTIFICATION. - (1) Notwithstanding any other provision of law or
3 requirement for economic justification established pursuant to 42 U.S.C. 1962-2, the Secretary
4 may implement a project under this authority provided the Secretary determines that the project—

5 (A) will significantly reduce potential flood damages;

6 (B) will improve the quality of the environment; and

7 (C) is justified considering all costs and beneficial outputs of the project.

8 (2) Within 180 days of the date of enactment of this section the Secretary shall develop
9 criteria for selecting and rating the projects to be carried out as a part of the Program authorized
10 by this section and shall establish policies and procedures for carrying out the studies and projects
11 undertaken under this authority.

12 (d) REPORTING REQUIREMENT. The Secretary may not implement a project under
13 this authority until—

14 (1) the Secretary provides to the appropriate committees of Congress a
15 written notification describing the project and the determinations reached pursuant
16 to subsection (c); and

17 (2) a period of 21 calendar days has expired following the date on which
18 the notification was received by the Committees.

19 (e) PROGRAM REVIEW. - The program established pursuant to this section shall be
20 subject to an independent review to evaluate the efficiency of the program in achieving the dual
21 goals of flood hazard mitigation and ecosystem restoration. The Secretary shall transmit a report
22 on the findings of the review conducted under this subsection to the Congress by April 2004,
23 together with any recommendations for continuing the program.

24 (f) PER PROJECT LIMITATION. - No more than \$75,000,000 in Army Civil Works
25 appropriations may be expended on any single project undertaken under this authority.

26 (g) AUTHORIZATION OF APPROPRIATIONS.- There is authorized to be

DRAFT BILL LANGUAGE

1 appropriated to carry out this section \$25,000,000 for each fiscal year for Fiscal Years 1999 and
2 2000; \$50,000,000 for Fiscal Year 2001; and \$75,000,000 for each fiscal year for Fiscal Years
3 2002 through 2004. All studies and projects undertaken under this authority from Army Civil
4 Works appropriations shall be fully funded within the program funding levels provided in this
5 subsection.

DRAFT BILL LANGUAGE

SECTION 5. SHORE PROTECTION.

Section 103(d) of the Water Resources Development Act of 1986 (100 Stat. 4085-5086) is amended by--

(1) inserting the following immediately before the phrase “Costs of constructing projects or measures for beach erosion control”:

“(1) CONSTRUCTION:”; and,

(2) inserting a new paragraph (2) as follows:

“(2) PERIODIC NOURISHMENT: The non-Federal cost of the periodic nourishment of projects or measures for shore protection or beach erosion control shall be 65 percent, except that all costs assigned to benefits to privately owned shores (where use of such shores is limited to private interests) or to prevention of losses of private lands shall be borne by the non-Federal interest and all costs assigned to the protection of federally owned shores shall be borne by the United States.”.

DRAFT BILL LANGUAGE

SECTION 6. SMALL FLOOD CONTROL PROJECTS.

Section 205 of the Flood Control Act of 1948 as amended (33 U.S.C. 701s) is further amended by--

- (1) striking “construction of small projects” and inserting in lieu thereof
“implementation of small structural and nonstructural projects”; and
- (2) striking “\$5,000,000” and inserting in lieu thereof “\$7,000,000.”

DRAFT BILL LANGUAGE

**SECTION 7. USE OF NON-FEDERAL FUNDS FOR COMPILING AND
DISSEMINATING INFORMATION ON FLOODS AND FLOOD
DAMAGES.**

Section 206(b) of the Flood Control Act of 1960 as amended (33 U.S.C. 709a(b)) is further amended by adding the following language immediately following the word “section” in the last sentence of that subsection:

“, except that this limitation on fees shall not apply to funds voluntarily contributed by such entities for the purpose of expanding the scope of the services requested by such entities.”

DRAFT BILL LANGUAGE

SECTION 8. EVERGLADES AND SOUTH FLORIDA ECOSYSTEM RESTORATION.

Subsections (b)(3)(B) and (b)(3)(C)(i) of section 528 of the Water Resources Development Act of 1996 [110 Stat. 3769] are amended by striking “1999” and inserting in lieu thereof “2000”.

DRAFT BILL LANGUAGE

SECTION 9. AQUATIC ECOSYSTEM RESTORATION.

Section 206(c) of the Water Resources Development Act of 1996 [110 Stat. 3679-3680] is amended by inserting a new sentence at the end thereof as follows:

“Notwithstanding 42 U.S.C. 1962d-5b(b), for any project undertaken under this authority, a non-Federal interest may also include a non-profit entity.”

DRAFT BILL LANGUAGE

SECTION 10. BENEFICIAL USES OF DREDGED MATERIAL.

Section 204 of the Water Resources Development Act of 1992 [106 Stat. 4826] as amended by section 207 of the Water Resources Development Act of 1996 [110 Stat. 3680] is further amended by --

(1) striking “cooperative agreement in accordance with the requirements of section 221 of the Flood Control Act of 1970” from subsection (c) and inserting in lieu thereof “binding agreement with the Secretary” ; and,

(2) inserting a new subsection (g) as follows:

“(g) Non-Federal Interests. – Notwithstanding 42 U.S.C. 1962d-5b(b), for any project carried out under this section, a non-Federal interest may also include a non-profit entity.”

DRAFT BILL LANGUAGE

**SECTION 11. COOPERATIVE AGREEMENTS FOR NATURAL RESOURCES,
ENVIRONMENTAL PROTECTION, CONSERVATION, AND
RECREATION MEASURES.**

The Secretary is authorized to enter into cooperative agreements with non-Federal public bodies and non-profit entities for the purpose of facilitating collaborative efforts involving environmental protection and restoration, natural resources, conservation, and recreation in connection with the development, operation, and management of water resources projects under the jurisdiction of the Department of the Army.

DRAFT BILL LANGUAGE

SECTION 12. CONTRIBUTIONS BY STATES AND POLITICAL SUBDIVISIONS.

Section 5 of the Flood Control Act of 1936 as amended by Public Law 208, 75th Congress (33 U.S.C. 701h) is further amended by inserting the words “or environmental restoration” after the words “flood control.”

SECTION 13. RECREATION USER FEES.

(a) During fiscal years 1999 through 2002, the Secretary may withhold from the special account established pursuant to 16 U.S.C. 460l-6a(i)(1)(A) 100 percent of the amount of receipts above a base line of \$34,000,000 per each fiscal year received from fees imposed at recreation sites under the administrative jurisdiction of the Department of the Army pursuant to 16 U.S.C. 460l-6a(b). The amounts withheld shall be retained by the Secretary and shall be available, without further appropriation, for expenditure by the Secretary in accordance with the provisions of this section. Such amounts shall remain available through September 30, 2005.

(b) In order to increase the quality of the visitor experience at public recreational areas and to enhance the protection of resources, the amounts withheld pursuant to subsection (a) and available for expenditure may only be used for backlogged repair and maintenance projects (including projects relating to health and safety) and for interpretation, signage, habitat or facility enhancement, resource preservation, annual operation (including fee collection), maintenance, and law enforcement related to public use.

(c)(1) Eighty percent of the total amount withheld by the Secretary shall be available for expenditure without further appropriation at the specific site from which such funds, above baseline, are collected, and shall be accounted for separately.

(2) Twenty percent of the total amount withheld by the Secretary shall be available for expenditure without further appropriation for use on an agency-wide basis and shall be accounted for separately.

DRAFT BILL LANGUAGE

SECTION 14. SHORELINE MANAGEMENT PROGRAM FEES.

No later than 12 months after the date of enactment of this Act and every five years thereafter, the Secretary shall review the Shoreline Management Program administered by the Army Corps of Engineers at water resources development projects under the jurisdiction of the Department of the Army to determine the costs associated with administering the Program. Each review conducted pursuant to this section shall include an analysis of the fee schedule in place at the time the review is initiated. If the Secretary determines that adjustments to the fee schedule are necessary in order to ensure collection of revenues sufficient to cover the costs of administering the Program, the Secretary may make those adjustments in accordance with applicable regulations.

DRAFT BILL LANGUAGE

**SECTION 15. WATER RESOURCES DEVELOPMENT STUDIES FOR THE PACIFIC
REGION.**

Section 444 of the Water Resources Development Act of 1996 [110 Stat. 3747] is amended by striking the phrase “interest of navigation” and inserting the following in lieu thereof:

“interests of water resources development, including navigation, flood damage reduction, and environmental restoration.”

SECTION 16. WATER RESOURCES FOUNDATION.

(a) ESTABLISHMENT.- There is established the Water Resources Foundation (hereinafter referred to as the “Foundation”) as a charitable and nonprofit corporation domiciled in the District of Columbia, which is not an agency or establishment of the United States.

(b) PURPOSES. - The purposes of the Foundation are to--

(1) encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the Army Corps of Engineers in managing natural resources at water resources development projects administered by the Department of the Army;

(2) to undertake and conduct such other activities as will further the conservation and management of natural, scenic, historic and recreational resources at such projects;

(3) further a stewardship ethic among American citizens to conserve and utilize the diverse natural resources available at such projects;

(4) initiate and support programs that broaden and enhance the services, facilities, and educational and interpretive activities for visitors to such projects; and,

(5) strengthen and improve the various means by which the Army Corps of Engineers uses its human and financial resources to manage the natural resources at such projects.

(c) LIMITATIONS AND CONFLICTS OF INTERESTS.- (1) The Foundation shall not participate or intervene in a political campaign on behalf of any candidate for public office.

(2) No director, officer, or employee of the Foundation shall participate, directly or indirectly, in the consideration or determination of any question before the Foundation affecting-

(A) the financial interests of the director, officer, or employee; or

(B) the interests of any corporation partnership, entity, or organization in

DRAFT BILL LANGUAGE

1 which such director, officer, or employee--

2 (i) is an officer, director, or trustee; or

3 (ii) has any direct or indirect financial interest.

4 (d) TAX EXEMPT STATUS. For purposes of section 501(c)(3) of Title 26 of the United
5 States Code, the Foundation shall be treated as organized and operated exclusively for charitable
6 purposes in calendar years 1998 and 1999. For calendar years 2000 and thereafter, the
7 Foundation shall be required to maintain its tax exempt status in the manner as prescribed by the
8 Secretary of the Treasury for similar tax exempt organizations.

9 (e) BOARD OF DIRECTORS AND GOVERNANCE OF THE FOUNDATION. -

10 (1) The Foundation shall have a governing Board of Directors (hereinafter
11 referred to as the Board”), which shall consist of nine Directors, each of whom
12 shall be a United States citizen and none of whom shall be an employee of the
13 Federal government. Members of the Board shall be appointed by the Secretary
14 and shall be educated in or have actual experience in natural or cultural resource
15 management, recreation management, or law. To the extent practicable, the
16 membership of the Board shall represent diverse points of view relating to natural
17 and cultural resource issues. The Secretary or a designee shall serve as a liaison to
18 the Board. Appointment to the Board shall not constitute employment by, or the
19 holding of an office of, the United States for the purposes of any Federal law.

20 (2) Within one year after the date of enactment of this Act, the Secretary
21 shall appoint the initial members of the Board of Directors. Of these initial
22 members, three shall be appointed for a term of two years, three members shall be
23 appointed for a term of three years, and three members shall be appointed for a
24 term of four years. All subsequent appointments to the Board shall be for a term
25 of four years.

26 (3) The Chairperson shall be elected by the Board from its members. A

DRAFT BILL LANGUAGE

1 chairperson shall serve for a two-year term and may be re-elected to the post
2 during the Chairperson's tenure as a Director.

3 (4) A majority of the current voting membership of the Board shall
4 constitute a quorum for the transaction of business.

5 (5) The Board shall meet at the call of the Chairperson at least once a year.
6 If a Director misses three consecutive regularly scheduled meetings, that individual
7 may be removed from the Board by majority vote of the Board of Directors and
8 that vacancy filled in accordance with paragraph (2) of this subsection.

9 (6) Voting members of the Board shall serve without pay, but may be
10 reimbursed for the actual and necessary traveling and subsistence expenses
11 incurred by them in the performance of their duties for the Foundation. Such
12 reimbursement may not exceed such amount as would be authorized under section
13 5703 of Title 5, for the payment of expenses and allowances for individuals
14 employed intermittently in the Federal Government service.

15 (7) The Board may complete the organization of the Foundation by
16 appointing employees, adopting a constitution and bylaws consistent with the
17 purposes of the Foundation and the provisions of this section, and undertaking
18 such acts as may be necessary to function and carry out the provisions of this
19 section.

20 (8) Officers and employees shall not be appointed or hired by the Board
21 until the Foundation has sufficient funds to pay for their services. Such officers or
22 employees of the Foundation shall not be considered Federal employees for any
23 purpose, including the provisions of Title 5, governing appointments in the
24 competitive service, and may be paid without regard to the provisions of chapter
25 51 and subchapter III of chapter 53 of such title relating to classification and
26 General Schedule pay rates, except that no individual so appointed may receive

DRAFT BILL LANGUAGE

1 pay in excess of the annual rate of basic pay in effect for Level V of the Executive
2 Schedule.

3 (9) Prior to the appointment or hiring of any other individual, the Board
4 shall appoint an individual to serve as the Executive Director of the Board, who
5 shall serve at the direction of the Board as its chief operating officer and who shall
6 be knowledgeable and experienced in matters relating to natural and cultural
7 resource management.

8 (f) CORPORATE POWERS AND OBLIGATIONS.

9 (1) The Foundation--

10 (A) shall have perpetual succession;

11 (B) may conduct business throughout the several States,
12 territories, and possessions of the United States;

13 (C) shall have its principal offices in the Washington, D.C.
14 metropolitan area; and

15 (D) shall at all times maintain a designated agent in the
16 District of Columbia authorized to accept service of process for the
17 Foundation.

18 (2) The serving of notice to, or service of process upon, the agent required
19 under this subsection, or mailed to the business address of such agent, shall be
20 deemed as service upon or notice to the Foundation.

21 (3) The Foundation shall have an official seal selected by the Board which
22 shall be judicially noticed.

23 (4) To carry out its purposes, the Foundation shall have, in addition to
24 powers otherwise authorized under this section, the usual powers of a corporation
25 in the District of Columbia, including the power -

26 (A) to accept, receive, solicit, hold, administer and use any

DRAFT BILL LANGUAGE

1 gift, devise, or bequest, either absolutely or in trust, of real or
2 personal property or any income therefrom or other interest therein;

3 (B) to acquire by purchase or exchange any real or personal
4 property or interest therein;

5 (C) unless otherwise required by the instrument of transfer,
6 to sell, donate, lease, invest, reinvest, retain or otherwise dispose of
7 any property or income therefrom;

8 (D) to sue and be sued, and complain and defend itself in
9 any court of competent jurisdiction, except that the Directors of the
10 Board shall not be personally liable, except for gross negligence;

11 (E) to enter into contracts or other arrangements with
12 public agencies, private organizations, and persons and to make
13 such payments as may be necessary to carry out its functions; and

14 (F) to do any and all acts necessary and proper to carry out
15 the purposes of the Foundation.

16 (g) PROPERTY.-

17 (1) The Foundation may acquire, hold, and dispose of lands, waters, or
18 other interests in real property by donation, gift, devise, purchase or exchange.
19 For the purposes of this section, an interest in real property shall include, but not
20 be limited to, mineral and water rights, rights of way, and easements appurtenant
21 or in gross. Nothing in this section shall be construed to be applied to real or
22 personal property of the United States of America.

23 (2) No lands or waters, or interests therein, that are owned by the
24 Foundation and are determined by the Secretary to be valuable for purposes
25 established in this section shall be subject to condemnation by any State or political
26 subdivision, or any agent or instrumentality thereof.

DRAFT BILL LANGUAGE

1 (h) ADMINISTRATIVE SUPPORT. - The Secretary may reimburse the Foundation for
2 expenses incurred pursuant to subsection (e) of this section, except that reimbursement for
3 traveling and subsistence payments may not exceed then current Federal Government per
4 diem rates.

5 (i) AUDITS AND REPORT REQUIREMENTS. -

6 (1) For purposes of the Act entitled "An Act for audit of accounts of
7 private corporations established under Federal law", approved August 30, 1964
8 (36 U.S.C. 1101 through 1103; Pub. L. 88-504) the Foundation shall be treated as
9 a private corporation established under Federal law.

10 (2) The Foundation shall transmit to the Secretary each year a report of its
11 proceedings and activities of the previous year, including a full and complete
12 statement of its receipts, expenditures, and investments.

13 (j) RELEASE FROM LIABILITY. - The United States shall not be liable for any debts,
14 defaults, acts or omissions of the Foundation nor shall the full faith and credit of the United States
15 extend to any obligations of the Foundation.

16 (k) ACTIVITIES OF THE FOUNDATION AND ARMY CORPS OF ENGINEERS. -
17 The activities of the Foundation, authorized under the provisions of this Act shall be supplemental
18 to and shall not preempt any authority or responsibility of the Army Corps of Engineers under any
19 other provision of law.

20 (l) AUTHORIZATION OF APPROPRIATIONS. For the purposes of reimbursing
21 providing the Foundation for certain costs, as provided for in subsection (h) of this section, there
22 is authorized to be appropriated to the Department of the Army \$300,000 for each of fiscal years
23 1999, 2000, and 2001.

DRAFT BILL LANGUAGE

SECTION 17. REGULATORY PROGRAM FUNDING.

(a) The Secretary shall establish and collect fees from permit applicants for the evaluation of commercial permit applications; the preparation of Environmental Impact Statements as required by the National Environmental Policy Act of 1969 in connection with such commercial permit applications; and the delineation of wetlands for major developments affecting wetlands.

(b) There is hereby established as a special account in the Treasury of the United States the “Army Civil Works Regulatory Program Account” (hereafter referred to as the “Regulatory Program Account”) into which shall be deposited fees collected by the Secretary pursuant to subsection (a) of this section. Amounts deposited into the Regulatory Program Account shall be available to the Secretary, as provided in Appropriation Acts, to apply toward the costs incurred by the Department of the Army in administering laws pertaining to the regulation of the navigable waters of the United States including wetlands, in addition to appropriations otherwise available for the same purpose.

DRAFT BILL LANGUAGE

SECTION 18. FLOOD MITIGATION NEAR PIERRE, SOUTH DAKOTA.

(a) GENERAL.- (1) To provide full operation capability to carry out the authorized purposes of the Missouri River Main Stem dams that are part of the Pick-Sloan Missouri River Basin Program authorized by section 9 of the Act entitled “An Act authorizing the construction of certain public works on rivers and harbors for flood control, and other purposes” approved December 22, 1944, the Secretary may acquire from willing sellers such land and property in the vicinity of Pierre, South Dakota, or floodproof or relocate such property within the project area, as the Secretary determines is adversely affected by the full wintertime Oahe Powerplant releases, provided that non-Federal interests pay 35 percent of the cost of the work. Any lands that are acquired under this authority will be kept in public ownership and will be dedicated and maintained in perpetuity for a use that is compatible with any remaining flood threat.

(2) The Secretary may not obligate funds to implement this section until the Secretary has completed a report addressing the criteria for selecting which properties are to be acquired, relocated or floodproofed, and a plan for implementing such measures. This report should be completed no later than one year after funding is made available. The report and implementation plan should be coordinated with the Federal Emergency Management Agency, and both should be prepared in consultation with other Federal agencies, and State and local officials, and residents. Such report should take into account information from prior and ongoing studies.

(b) STUDY COST-SHARING REQUIREMENTS. - The cost of studies conducted under this authority shall be shared in accordance with section 105 of the Water Resources Development Act of 1986 [100 Stat. 4088-4089], as amended.

(c) AUTHORIZATION FOR APPROPRIATIONS. - There is authorized to be appropriated to carry out this section funds not to exceed \$25,000,000.

DRAFT BILL LANGUAGE

SECTION 19. LOWER MISSOURI RIVER AQUATIC RESTORATION PROJECTS.

(a) IN GENERAL.-Not later than one year after funds are made available for such purposes, the Secretary shall finalize a comprehensive report--

(1) identifying a general implementation strategy and overall plan for environmental restoration and protection along the Lower Missouri River between Gavins Point Dam and the confluence of the Missouri and Mississippi Rivers; and,

(2) recommending individual environmental restoration projects that can be considered by the Secretary for implementation under section 206 of the Water Resources Development Act of 1996 [110 Stat. 3679 - 3680].

(b) SCOPE OF PROJECTS.- Any environmental restoration projects carried out pursuant to subsection (a) shall provide for such activities and measures as the Secretary determines to be necessary to protect and restore fish and wildlife habitat without adversely affecting private property rights or water related needs of the region surrounding the Missouri River, including flood control, navigation, and enhancement of water supply and shall include some or all of the following components:

(1) modification and improvement of navigation training structures to protect and restore fish and wildlife habitat;

(2) modification and creation of side channels to protect and restore fish and wildlife habitat;

(3) restoration and creation of island fish and wildlife habitat;

(4) creation of riverine fish and wildlife habitat; and

(5) physical and biological monitoring for evaluating the success of the projects.

(c) COORDINATION.- The Secretary shall, to the maximum extent practicable, integrate projects carried out in accordance with this section with other Federal, Tribal, and State restoration activities.

DRAFT BILL LANGUAGE

1 (d) COST SHARING.-The report to be carried out pursuant to subsection (a) shall be
2 undertaken at full Federal expense.

DRAFT BILL LANGUAGE

SECTION 20. PAYMENT OPTION, MOOREFIELD, WEST VIRGINIA.

The Secretary may permit the non-Federal sponsor for the project for flood control, Moorefield, West Virginia, to pay without interest the remaining non-Federal cost over a period not to exceed thirty years to be determined by the Secretary.